

Inventor(s): Mockel *et al.*  
Application No.: 09/725,178  
Attorney Docket No.: 021123-0273989

## II. REMARKS

### **Preliminary Remarks**

Based upon the foregoing amendment and remarks, reconsideration and allowance of the present application are respectfully requested. Claims 5, 7, 22, 23, and 28-34 are currently pending in this application. Claims 5, 7, 22, 23, and 28-33 have been allowed. Claim 34 is subject to a restriction and has been withdrawn by the examiner.

The applicants would like to thank the examiner for informally discussing the outstanding issues on December 21, 2005. This response is timely filed with a one month extension of time. The applicants request entry of the foregoing amendment, as it will place the application in condition for allowance. The applicants do not intend by these or any amendments to abandon subject matter of the claims as originally filed or later presented, and reserve the right to pursue such subject matter in continuing applications.

### **Patentability Remarks**

On page 2 of the official action, the examiner alleged that newly submitted claim 34 is directed to an independent invention that is distinct from the invention as originally claimed. Specifically, the examiner asserted that method claim 34 was part of the originally non-elected restricted process claims group II as discussed in the restriction requirement dated January 28, 2002. The examiner further alleged that claim 34 does not include all the limitations of the allowed product claims because this claim is not limited to the use of the allowed product claims. In our informal discussion with the examiner, the examiner further explained that natural methods of overexpression of the *gpm* polynucleotide could fall within the scope of claim 34 and yet, were not specified by the language of the claim. The examiner asserted multiple recombination events between the *gpm* polynucleotide and the coryneform chromosome is one example of a natural phenomenon resulting in overexpression of the *gpm* polynucleotide. The examiner concluded that the process claims goes beyond the use of the allowed products and thus has withdrawn claim 34 as being directed to a non-elected invention. The applicants respectfully traverse.

The applicants respectfully submit that the type of overexpression is clearly defined in claim 34. Specifically, part (a) of claim 34 defines the overexpression of the *gpm* polynucleotide as either by increasing the copy number of said *gpm* polynucleotide or

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operably linking said *gpm* polynucleotide to a promoter. The applicant submits that one of skill in the art would clearly understand that overexpressing the *C. glutamicum gpm* polynucleotide either by increasing the copy number or operably linking a promoter to *gpm* both involve using an expression vector. Phenomenons of multiple recombination events between the *gpm* polynucleotide and the coryneform chromosome would be highly unlikely, and were not defined in method claim 34 as one of the avenues for increasing *gpm* expression.

Nevertheless, solely to expedite prosecution, and without prejudice to the applicants right to seek broader claims in a continuing application, the applicants have canceled claim 34 without prejudice. In view of the foregoing amendment, the applicants respectfully submit that the restriction of claim 34 is no longer at issue, and the remaining pending claims are in condition for allowance.

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### III. CONCLUSION

In view of the foregoing, the applicants believe that the claims are in form for allowance, and hereby respectfully solicit such action. If any point remains in issue which the examiner feels may be best resolved through a personal or telephone interview, the examiner is strongly urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: 

Thomas A. Cawley, Jr., Ph.D.  
Registration No.: 40,944  
Telephone No.: 703.770.7944

TAC/PAJ

P.O. Box 10500  
McLean, VA 22102